

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES M. KERNAN, individually and on behalf of all those independent entrepreneurs, small and disadvantaged business enterprises, suffering serious, permanent and irreparable economic and social injury and damage as a result of actions by the Defendants to limit the effectiveness of Plaintiffs James M. Kernan, Oriska Corporation and Oriska Insurance Company to support the efforts of independent entrepreneurs, small and disadvantaged business enterprises to create jobs for the disadvantaged which can lead to rewarding careers providing reliable and steady income and benefits for their workers and their families, ORISKA CORPORATION, and ORISKA INSURANCE COMPANY,

ORDER

13-CV-3196 (JS) (ARL)

Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES f/k/a New York State Department of Insurance; BENJAMIN M. LAWSKY, Superintendent; CHARLES "BUZZ" SAWYER, Assistant Chief Investigator; MICHAEL A. MARK, Investigator; JAMES MASTERSON, Supervising Insurance Examiner, Property Bureau; MICHAEL V. IMBRIANO, Principal Insurance Examiner; EUGENE BENDER, Esq., Deputy General Counsel, Insurance; JOHN G. ROTHBLATT, Esq., former Principal Counsel; BETH COHAN, Esq., Associate Attorney; JEFFREY A. STONEHILL, Esq., Hearing Officer; HOWARD D. MILLS, III, former Superintendent, EDWARD R. BROTON, Assistant United States Attorney, and the UNITED STATES OF AMERICA, as their several interests may appear,

Defendants.

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APPEARANCES

For Plaintiffs:

James M. Kernan

James M. Kernan, pro se
2 South End Avenue
New York, NY 10280

Oriska Corp. and
Oriska Ins. Co.

Antonio Faga, Esq.
23 Oxford Road
New Hartford, NY 13424

For Defendants:

State Defendants

Ralph Pernick, Esq.
New York State Attorney General
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Mineola, NY 11501

Federal Defendants

Thomas McFarland, Esq.
United States Attorney's Office
Eastern District of New York
610 Federal Plaza
Central Islip, NY 11722

SEYBERT, District Judge:

Pending before the Court are: (1) pro se Plaintiff James M. Kernan's proposed Amended Complaint (Docket Entry 17) and (2) the State Defendants' letter requesting that their pending motion to dismiss be deemed unopposed (Docket Entry 13).

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, a plaintiff may amend its complaint once "as a matter of course" within twenty-one days of service of a responsive pleading or a motion to dismiss. FED. R. CIV. P. 15(a)(1)(B). Otherwise, a plaintiff may only amend his complaint "with the opposing party's written consent or the court's leave." FED. R. CIV. P. 15(a)(2). Here, the State Defendants filed and served their motion to dismiss on July 19, 2013; therefore, Mr. Kernan could only amend as a matter of right on or before August 9, 2013.

The Court, however, did not receive Mr. Kernan's proposed Amended Complaint until August 30, 2013--after his time to amend as a matter of right expired; thus, he needed to obtain leave of court or the defendants' consent. He obtained neither. Accordingly, the Court REJECTS Mr. Kernan's proposed Amended Complaint; the original Complaint shall remain the operative pleading.

The Court, however, DENIES the State Defendants' request to deem their motion unopposed. The State Defendants indicated on their motion papers (albeit incorrectly)¹ that Plaintiffs had until August 30, 2013 to file their opposition papers. Mr. Kernan filed his proposed Amended Complaint on August 30, 2013. Thus, in an abundance of caution, the Court sua sponte GRANTS Plaintiffs an extension through September 23, 2013 to oppose the pending motion to dismiss. No further extensions of Plaintiffs' time to oppose will be granted.

The Clerk of the Court is directed to mail a copy of this Order to Mr. Kernan.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 9, 2013
Central Islip, NY

¹ Local Civil Rule 6.1(b) provides that papers opposing a motion to dismiss shall be filed within fourteen days of service of the moving papers "[u]nless otherwise provided by statute or rule, or unless otherwise ordered by the Court in a Judge's Individual Practice or in a direction in a particular case." Local Civil Rule 6.1 does not allow the parties to establish their own briefing schedules without leave of court.